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W.A.(MD)No.1123 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.07.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

and

THE HONOURABLE MR.JUSTICE G.ARUL MURUGAN

W.A.(MD)No.1123 of 2024

and

C.M.P.(MD)No.8587 of 2024

- 1.The State of Tamil Nadu,
Rep. by its Secretary,
Department of School Education,
Fort St. George,
Chennai – 9.
- 2.The Director of School Education,
College Road,
Chennai – 6.
- 3.The Chief Educational Officer,
Nagercoil,
Kanyakumari District.
- 4.The District Educational Officer,
Kuzhithurai,
Kanyakumari District.

: Appellants



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Vs.

1.J.Viji

2.The Correspondent,

St.Francis Xavier High School,

Alanchy,

Kanyakumari District.

: Respondents

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent, praying to set aside the order dated 02.09.2022 in W.P.(MD) No.24604 of 2018 and allow this Writ Appeal.

For Appellants

: Mr.S.Shaji Bino

Special Government Pleader

JUDGMENT

[Judgment of the Court was delivered by **R.SURESH KUMAR, J.**]

When this Writ Appeal was taken up for hearing, it was pointed out by the learned Counsel on either side that similar Writ Appeals in W.A.(MD)Nos.828 & 967 of 2024 have been disposed of by our order dated 12.06.2024, where we have passed the following order:

“26.It is an admitted case that two posts, namely, PG Assistant (English) and PG Assistant (Mathematics) at the respondent School, are the sanctioned posts, wherein since the incumbents either



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have been promoted or retired, both the posts have become vacant. To fill up the said posts, immediate action has to be taken by the School. Assuming that the Rules had come into effect from 13.01.2023, under Rule 28(2) as well as 28(5) r/w Annexure (v) of the Rules, the method to be adopted by the School for filling up the post of PG Assistant is first to explore the possibility of appointment through deployment and if there is no candidate available in the education district, then only, the promotional avenue has to be explored and appointment shall be made by way of promotion. Insofar as this legal position by quoting the Rules is concerned, as stated by the learned Additional Government Pleader, there could be no quarrel.

27.However, when we turn into factual matrix, when the cases came up for earlier hearing, after hearing the arguments of both sides, at one point of time, this Court directed the learned Additional Government Pleader to produce necessary documents, stating that there has been a list of excess Teachers in both subjects, namely, PG Assistant (English) and PG Assistant (Mathematics), available in the education district for the purpose of redeployment to the respondent School.

28.With regard to the said query raised by this Court, the learned Additional Government Pleader has produced a list of surplus Teachers, that has been issued on 27.05.2024, that is only last month, where, according to the appellants, there have been 15 excess

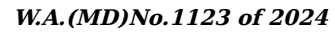


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Teachers, out of which, there was one excess Teacher in PG Assistant (English) and one excess Teacher in PG Assistant (Mathematics). The remaining Teachers are for other subjects, like Tamil, Science, Physical Education. For all those Teachers, counselling was also conducted on 30.05.2024. Pursuant to the said counselling, approval has been given to one PG Assistant (Mathematics) and one PG Assistant (English) and they are chosen to go for some other School.

29.It is to be noted that this list has been issued by the District Educational Office only on 27.05.2024, whereas the issue now before us pertains to the academic year 2023-24. Therefore, insofar as the appointment, that has to be made in respect of these two posts, which have become vacant in the respondent School, is concerned, one post had become vacant some time in the month of February, 2023 and another in the month of April or May, 2022 and in respect of these two posts, the order of appointment was given on 22.02.2023 to the post of PG Assistant (Mathematics) and order of appointment has been given on 25.05.2023 with effect from 12.06.2023 to the post of PG Assistant (English).

30.Therefore, at the time, when the posts had become vacant or at the time of appointments, which have been made in respect of these two Teachers by the respondent School, there has been no list of excess Teachers ever been made available, either through Website or through any private communication issued



31. When that being the position, the reasons, that have been stated in the order passed by the Chief Educational Officer in rejecting the proposal submitted by the School for approval of such appointment, are to be gone into. If we go through the order dated 05.12.2023 passed in both the cases, which were impugned before the Writ Court, the Chief Educational Officer has only stated that there have been two Mathematics Teachers in PG and two English Teachers in PG, available as excess Teachers and those Teachers can be utilised for the purpose of appointment in the respondent School. Without making such appointment, if any appointment is made by giving promotion to the existing BT Assistant in the School concerned, that cannot be approved. In this context, Rule 28(5) and Annexure (v) of the Rules have also been quoted in the order.

<https://www.mhc.tn.gov.in/judis>



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33. *In this context, even though arguments were advanced by the learned Additional Government Pleader that as per the Rules, whenever vacancy arose, the School concerned has to explore the possibility of verifying as to whether there has been any excess Teacher available in the particular subject and category in the education district, that proposition as projected by the learned Additional Government Pleader, is to be outrightly rejected, the reason being that insofar as the particular School is concerned, if there has been a vacancy, which arises, it has to be filled up as per the Rule.*

34. *If the School wants to fill up the post by way of first method of redeployment, readily, the list of excess Teachers in a particular subject in particular cadre must be available for all the Schools, which are running in the District. Unless such lists are available to all the Schools released by the Chief Educational Officer and the District Educational Officer, there could be no access of any information with regard to the surplus Teachers in any other Schools in the District. Therefore, that kind of exploration has to be undertaken only by the Educational Authorities and based on such enumeration, they have to prepare the list in every academic year, that too, well prior to the commencement of the academic year and such list has to be released.*



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35. Here in the case on hand, a very short list of 15 persons has been released on 27.05.2024, where one PG Assistant (Mathematics) and one PG Assistant (English) have been shown as surplus. Whereas, such list has only been released for the academic year 2024-25 and therefore, the said argument advanced by the learned Additional Government Pleader, that the School has to explore the possibility to go to all the Schools in the District to draw a list of surplus Teachers, is thoroughly impossible and it is not the job left with any School, as the job is left with the Educational Authorities. That must be the interpretation to be given to Rule 28 of the Rules.

36. Moreover, yet another peculiar aspect also has to be seen in this case, where the appointment, that has been given insofar as PG Teacher of the respondent School, dated 22.02.2023, is for Maths subject. The said appointment has been rejected, by order dated 05.12.2023, by the Chief Educational Officer, Thanjavur District. Whereas, in the very same Thanjavur District at Kumbakonam education district, there has been another School called 'Srinivasa Rao Government Aided Higher Secondary School', where the post of PG Assistant had become vacant with effect from 31.05.2023, as the existing incumbent retired from service. In order to fill up the said post, the School Management had given promotion to an existing BT Assistant, namely, N.Rajeswari, and appointment had been given on 12.06.2023. The said appointment given



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by the said School on 12.06.2023 in the very same education district for the very same post of PG Assistant (Mathematics) has been approved by the Chief Educational Officer, who is none other than the first appellant herein, by proceedings dated 10.11.2023.

37.Though this proposal has been approved on 10.11.2023, within a period of one month, on 05.12.2023, with regard to case of the respondent School, the very same Chief Educational Officer has taken a different stand and stating all these reasons, by quoting Rule 28(5), Annexure (v) of the Rules and availability of two PG Teachers in Maths subject etc., rejected the proposal seeking approval. But, the very same Chief Educational Officer has been very silent about any of these issues insofar as his order, dated 10.11.2023 is concerned, giving approval to the said appointment of Rajeswari in the Srinivasa Rao Aided School.

38.When specifically, it was posed to the learned Additional Government Pleader to give explanation with regard to the order dated 10.11.2023, the very same learned Additional Government Pleader would submit that the order dated 10.11.2023 may be an illegal order, but that cannot be cited for comparison and there could be no equality in illegality. Therefore, the respondent School cannot take any shelter in seeking similar direction as that of the Srinivasa Rao Aided School by quoting the order, dated 10.11.2023.



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39.Absolutely, there could be no equality in illegality. But a rampant illegality is committed by the Chief Educational Officer of the Tanjavur District, who is the first appellant herein and when explanation is called for, the Chief Education Officer is silent and if he has not come forward to give any explanation, the Court can presume that for extraneous consideration, the order dated 10.11.2023 has been passed, whereas for the very same reason of non-fulfilling of extraneous consideration, the order dated 05.12.2023 has been passed.

40.Except this conclusion, no other conclusion can be arrived at by this Court, after having a perusal of both the orders dated 10.11.2023 and 05.12.2023, the reason being that the post in both Schools, which became vacant, is PG Assistant (Mathematics) and the appointment given in the respondent School is on 22.02.2023, that has been rejected on 05.12.2023, whereas for the very same PG Assistant (Mathematics) post, in respect of Srinivasa Rao Aided Shool, appointment has been given on 12.06.2023 and approved on 10.11.2023. In the approval order dated 10.11.2023, no reason whatsoever, including quoting of Rule 28 (5) of the Rules, has been made by the Chief Educational Officer; whereas the very same Chief Educational Officer, within 25 days, had passed a rejection order on 05.12.2023 in respect of the respondent School, where he has quoted Rule 28(5), Annexure (v) of the Rules and other reasons.



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41. Even though those reasons cited by the Chief Educational Officer, in the order dated 05.12.2023, would not be sustained, because of the reasons, which we have discussed herein above, the attitude of the very same Officer or the very same Authority, namely, the Chief Educational Officer, Tanjavur, in respect of these two Schools, clearly exposes the way in which this District Level Educational Officers are functioning in the State. Merely, this one Officer since has committed this mistake, the Court cannot put a blame on all similar officers, but this Court of-late had come across many such cases in the School Education Department, where these kind of discriminate orders have been passed at the whims and fancies of the District Educational Officer and the Chief Educational Officer. In the result, there has been pouring of litigations before the High Court both at the Principal Seat as well as the Madurai Bench of Madras High Court and repeatedly, this Court has held in innumerable cases that the way in which these Officers are functioning is not well to the Rule of law. Despite those orders, the attitude of the Officers and their functioning in such a way have become unstoppable.

42. This observation has become necessitated, in view of the facts, under which, these two orders have been placed before us for the immediate comparison.



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43.It is yet another agony to be mentioned herein that the very same Teacher Rajeswari, whose appointment has been approved by order of the Chief Educational Officer dated 10.11.2023, has been shown as an excess Teacher in the excess Teachers list of 15 Teachers, that has been released by the Chief Educational Officer on 27.05.2024. Knowing well that the Teacher, if at all approved, certainly, will become a excess Teacher, it could not be understood that on what basis, the Chief Educational Officer has given such approval in respect of said Srinivasa Rao Aided School, by order dated 10.11.2023. If the post became vacant on 23.06.2023, the Teacher would have been vacant for the academic year 2023-24. If the Teacher becomes excess for the academic year 2023-24, knowing well that the Teacher would be an excess Teacher in the particular School, such approval has been given on 10.11.2023. This scheme designed by the Chief Educational Officer has got exposed by the subsequent list of excess Teachers published by the very Chief Educational Officer for the year 2024-25, on 27.05.2024.

44.These documents are the clear testimony to establish a strong case against the appellants, not only by the respondent School but also by the various educational Institutions as well as the Teachers. These kind of attitude adopted by the Chief Educational Officer and District Educational Officer concerned, are nothing but a capricious exercise of power at whims and fancies of the Chief Educational Officer and



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District Educational Officer concerned,

45. We feel that this is one of the case, where the concerned Chief Educational Officer and the District Educational Officer, especially, the Chief Educational Officer shall be subjected to some enquiry to be conducted departmentally, therefore, at the end of this order, we are going to make recommendation to the Director of School Education to conduct an enquiry in this regard, insofar as the aforesaid episode is concerned.

46. Therefore, for all these reasons, that have been stated at the discussion herein above made, we do not have any hesitation to hold that the appointments, that have been made by the respondent School insofar as the posts of PG Assistant (Mathematics) and PG Assistant (English) for the academic year 2023-24 are concerned, are proper that have been made strictly in accordance with Rules. Therefore, those appointments are to be approved.

47. Though this much of detailed reasons have not been given by the learned Single Judge, it cannot be found fault with, because, the learned Single Judge has also come to the conclusion that if it is a standalone Institution and not by the Corporate Management, the staff strength alone will be the criteria to be followed, which is one of the added reasons apart from the reasons, that we discussed in allowing the Writ



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Petitions. Therefore, the order passed by the learned Single Judge through the common order dated 21.12.2023 has to be sustained, accordingly, it is sustained.

48.In view of the discussion herein above made, the appellants herein, especially, the first appellant, is hereby directed to give approval to the two appointments made by the respondent School, namely, PG Assistant (Mathematics) and PG Assistant (English) with effect from the date of such appointment, that is from 22.02.2023 in respect of PG Assistant (Mathematics) and from 12.06.2023 in respect of PG Assistant (English) without any further delay within a maximum period of one month from the date of receipt of a copy of this order.

49.It is made clear that once such approval order is given, the Teachers are entitled to get salary and other service benefits with effect from the said date of appointment.

50.Apart from the above directions, for the disturbing reasons, which we have discussed hereinabove, we are inclined to issue the following directions:

“(i)The Director of School Education, Higher Secondary is hereby directed to conduct enquiry with regard to the aforesaid episode with the Chief



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Educational Officer and the District Educational Officer of Thanjaur District and Kumbakonam education district and if any malpractice is found out at the end of the enquiry, disciplinary proceedings can be initiated against the erring officials.

(ii) Insofar as the implementation of the Rules, especially, Rule 28 of the said Rules, is concerned, the Director of School Education shall issue circular to all the Chief Educational Officers and the District Educational Officers to publish a list of surplus Teachers in the concerned education district well in advance, that is well prior to the commencement of the academic year, so that the School, where the post become vacant in a particular academic year, can easily access with the list of surplus Teachers and accordingly, they may explore the possibility of making appointment by taking Teachers from the list of surplus Teachers. This should be immediately implemented even for the current academic year, that is 2024-25, as the same has just begun."

51.In view of all these reasons, these Writ Appeals are dismissed with a cost of Rs.10,000/- (Rupees Ten Thousand only) in each of the Writ Appeals, which shall be borne by the first appellant,



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namely, the Chief Educational Officer, Thanjavur, from whom the amount can be collected by the Government to be paid to the respondent School. Consequently, connected miscellaneous petitions are closed."

2.Since this is yet another Writ Appeal against the very issue, this Writ Appeal also to be disposed of in the same line. Therefore, there shall be a similar order in this Writ Appeal also except the directions given in para 50(i) and 51 of the order in W.A.Nos.828 and 967 of 2024.

3.This Writ Appeal is dismissed accordingly. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

[R.S.K.,J.] & [G.A.M.,J.]
11.07.2024

Neutral Citation : Yes/No

Index : Yes/No

Internet : Yes/No

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To

- 1.The Secretary,
State of Tamil Nadu,
Department of School Education,
Fort St. George, Chennai – 9.
- 2.The Director of School Education,
College Road, Chennai – 6.
- 3.The Chief Educational Officer,
Nagercoil, Kanyakumari District.
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R.SURESH KUMAR, J.

and

G.ARUL MURUGAN, J.

MR

ORDER MADE IN

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